

231781

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.**

STB Docket No. AB-1071

**STEWARTSTOWN RAILROAD COMPANY
– ADVERSE ABANDONMENT –
IN YORK COUNTY, PA**

**JOINT MOTION TO STRIKE JAMES RIFFIN'S
SUR-REPLY OF JANUARY 25, 2012**

**ENTERED
Office of Proceedings**

FEB 1 - 2012

**Part of
Public Record**

**Alex E. Snyder
BARLEY SNYDER
100 East Market Street
York, PA 17401
Tel.: (717) 852-4975
asnyder@barley.com**

**Attorney for Stewartstown Railroad
Company**

February 1, 2012

**Keith G. O'Brien
Robert A. Wimbish
BAKER & MILLER PLLC
2401 Pennsylvania Ave., NW
Suite 300
Washington, DC 20037
Tel: (202) 663-7852, (202) 663-7824
kobrien@bakerandmiller.com
rwimbish@bakerandmiller.com**

**Attorneys for the Estate of
George M. Hart**

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.**

STB Docket No. AB-1071

**STEWARTSTOWN RAILROAD COMPANY
– ADVERSE ABANDONMENT –
IN YORK COUNTY, PA**

**JOINT MOTION TO STRIKE JAMES RIFFIN'S
SUR-REPLY OF JANUARY 25, 2012**

The Estate of George M. Hart (the "Estate") and the Stewartstown Railroad Company ("SRC") hereby respond jointly to James Riffin's ("Riffin") so-called "Reply to Opposition to James Riffin's Filings of January 18, 2012" (the "Riffin Sur-reply") filed in this proceeding on January 25, 2012. The Riffin Sur-reply is offered, by Mr. Riffin's own acknowledgement, as a reply to the Estate's and the Stewartstown Railroad Company's ("SRC") January 20, 2012 joint reply ("Joint Reply") in opposition to Riffin's January 18, 2012 "notice of intent to file an offer of financial assistance" and his related filings of that date. For the reasons set forth below, the Riffin Sur-reply should be stricken in its entirety. Also, for the reasons set forth in the Estate/SRC Joint Reply, the Estate and SRC once again urge the Board to promptly reject and (as appropriate) deny Mr. Riffin's January 18 filings.

As background, on July 7, 2011, the Estate filed an application ("application") pursuant to 49 USC § 10903 and 49 C.F.R. Part 1152, Subpart C, to authorize abandonment the entire line of SRC located in York County, PA. As set forth in the Federal Register notice published in this proceeding on July 27, 2011, interested persons could file written comments concerning the

proposed abandonment by no later than August 22, 2011. The Estate's reply in completion of the record was timely submitted on September 6, 2011.

On January 18, 2012, almost five months after the record in this proceeding had closed and over two months after offers of financial assistance to acquire the SRC line were due, Mr. Riffin filed a notice of intent to participate as a party of record ("the participation motion"), a notice of intent to file an offer of financial assistance (the "OFA Notice") and a motion for a protective order ("January 18 submissions"). On January 20, 2012, the Estate and SRC replied jointly, urging the Board to reject or deny Riffin's January 18 filings as appropriate. Five days later, Riffin filed the Riffin Sur-reply, which he misleadingly and utterly inaccurately depicts as a "reply" to the Estate/SRC Joint Reply.

Mr. Riffin is well aware that in a proceeding such as this one, the Board's regulations prohibit sur-replies (replies to replies).¹ In view of the Estate's and SRC's united opposition to Mr. Riffin's untimely OFA effort, it is clear that a waiver of the sur-reply rule here would substantially increase the burden on the Estate and SRC, and that it would materially interfere with speedy, just and inexpensive resolution of the issues which have long since been presented in this proceeding. The Estate and SRC therefore request that the Board strike the Riffin Sur-reply in accordance with the basic rule.

The thrust of the Riffin Sur-reply is that his OFA effort is not untimely despite the clear language of 49 USC § 10904(c) and the Board's own decisions to the contrary.² The Board does

¹ 49 CFR §1104.13(c).

² Section 10904(c) imposes a strict time limit on the filing an OFA, and both the Estate and SRC have opposed any OFA filing by Riffin at this juncture. The Board has stated that "allowing the late filing of an OFA over the owning carriers' objection would be contrary to Congress's direction to streamline the abandonment and OFA process." See Union Pacific Railroad Company – Abandonment Exception – In Lafayette County, Mo., STB Docket No. AB-33 (Sub-

not need a supplemental filing from Mr. Riffin to resolve this fundamental procedural issue, and Mr. Riffin's Sur-reply does not offer any new evidence that would assist the agency in rendering a decision. As such, the Riffin Sur-reply is not only procedurally inappropriate, but it is also of no benefit to the record, and it must therefore be stricken.

The balance of the Riffin Sur-reply concerns the merits of the abandonment itself and/or issues that would bear on the SRC line's net liquidation value – notwithstanding that Mr. Riffin is in no position to introduce evidence or argument on either issue at this time. To the extent that Mr. Riffin wished to submit comments pertaining to the merits of the proposed abandonment, his comments and observations were due in August of last year, not now. In fact, Mr. Riffin does not disguise the purpose of his Sur-reply, characterizing himself in that filing as a “protestant” to the abandonment. Yet at no time does Mr. Riffin explain why he is now attempting to submit comments on the merits of the abandonment proceeding some five months after his “protest” was due, and some four months after the record in this proceeding had closed. Riffin's effort to meddle in this proceeding reflects a fundamental disregard of the Board's regulations, and constitutes an abuse of the Board's processes that simply cannot be tolerated.

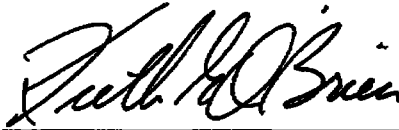
Mr. Riffin's attempt to comment on issues of the SRC line's net liquidation value by addressing alleged track salvage costs is equally inappropriate. There is no ongoing OFA process, and Mr. Riffin's discussion of salvage costs would only be appropriate if he were permitted to file an OFA – an issue clearly in dispute at this time – and thereafter.

For all of the above reasons, the Board should act expeditiously to strike the Riffin Sur-reply in its entirety, and, for the reasons set forth in the Estate/SRC Joint Reply, the Board also

No. 297X) slip op at 5; see also Aban. & Discontinuance of Rail Lines & Rail Transp. under 49 USC § 10903, 1 STB 894, 909-10.

should reject or deny Mr. Riffin's January 18 filings, lest this proceeding become further burdened by inappropriate filings to the detriment of all concerned.

Respectfully submitted,



Alex E. Snyder
BARLEY SNYDER
100 East Market Street
York, PA 17401
Tel.: (717) 852-4975
asnyder@barley.com

Attorney for Stewartstown Railroad
Company

Keith G. O'Brien
Robert A. Wimbish
BAKER & MILLER PLLC
2401 Pennsylvania Ave., NW
Suite 300
Washington, DC 20037
Tel: (202) 663-7852 and (202) 663-7824
kobrien@bakerandmiller.com
rwimbish@bakerandmiller.com

Attorneys for the Estate of George M. Hart

Dated: February 1, 2012

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing Joint Motion to Strike James Riffin's Sur-Reply of January 25, 2012 to be served upon all parties of record by first class mail (postage prepaid) or by more expeditious means of delivery.

A handwritten signature in black ink, appearing to read "Keith G. O'Brien", written over a horizontal line.

Keith G. O'Brien

Dated: February 1, 2012